

REPRESENTATIVE FOR PETITIONER:

Andrew J. Beargie, pro se

REPRESENTATIVE FOR RESPONDENT:

Marilyn Meighen, Attorney

**BEFORE THE
INDIANA BOARD OF TAX REVIEW**

Andrew J. Beargie,)	Petition No.: 53-017-15-1-5-00199-15
)	
Petitioner,)	Parcel No.: 53-02-16-100-012.000-017
)	
v.)	County: Monroe
)	
Monroe County Assessor,)	Assessment Year: 2015
)	
Respondent.)	

Appeal from the Final Determination of the
Monroe County Property Tax Assessment Board of Appeals

January 16, 2018

FINAL DETERMINATION

The Indiana Board of Tax Review (“Board”) having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

INTRODUCTION

1. Beargie challenged his property’s valuation, but he failed to offer any probative valuation evidence. We therefore find for the Assessor.

PROCEDURAL HISTORY

2. Beargie contested his 2015 assessment. The Monroe County Property Tax Assessment Board of Appeals (“PTABOA”) issued a notice of determination upholding the original assessment of \$113,100. Beargie timely filed a Form 131 petition with the Board.

HEARING FACTS AND OTHER MATTERS OF RECORD

3. On November 7, 2017, the Board’s Administrative Law Judge (“ALJ”), Jacob Robinson, held a hearing on the petition. Neither the Board nor the ALJ inspected the property. Beargie and Judith A. Sharp, the Monroe County Assessor, were sworn as witnesses.
4. Petitioner submitted the following exhibits:
 - Petitioner Exhibit 1: Report of Appraisers, filed June 4, 2014 in the Monroe Circuit Court No. 6, Cause No. 53C06-1403-PL-000624
 - Petitioner Exhibit 2: Certification of Payment of Court-Appointed Appraisers’ Award and Request for Transfer
 - Petitioner Exhibit 3: Legal description for portion of subject property acquired by the State of Indiana
5. Respondent submitted the following exhibits:
 - Respondent Exhibit A: 2013 Property Record Card for subject property
 - Respondent Exhibit B: 2014 Property Record Card for subject property
 - Respondent Exhibit C: 2015 Property Record Card for subject property
 - Respondent Exhibit D: Lis Pendens Notice, filed April 9, 2014 in the Monroe Circuit Court No. 6, Cause No. 53C06-1403-PL-000624
6. The following items are also recognized as part of the record:
 - Board Exhibit A: Form 131 Petition and attachments
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Hearing Sign-In Sheet

In addition, the Board incorporates into the record all filings by the parties and all orders and notices issued by the Board or the ALJ.

7. The subject property consists of a single-family residence located at 8745 N. Crossover Road, Bloomington.

SUMMARY OF BEARGIE'S CONTENTIONS

8. Beargie filed this appeal to ensure that the Assessor had taken the 0.077 acres of his land appropriated by the State of Indiana in 2014 into account when calculating his 2015 assessment. As part of the State's eminent domain action against him, three appraisers prepared a Report of Appraisers and concluded that the damages to the residue of the subject property were \$78,795. Beargie claimed that the appraisers' report shows the State of Indiana accepted that the subject property's value was only \$32,380 after the taking, which led him to question why his 2015 assessment was more than twice that amount. Beargie did not know how the three appraisers had valued his property prior to the taking, although he remembered it being consistent with the assessment. *Beargie testimony; Pet'r Exs. 1, 3.*

SUMMARY OF THE ASSESSOR'S CONTENTIONS

9. The Assessor contends that the subject property's 2015 assessment is correct. In 2014, she received a survey from the Monroe County Auditor's Office showing that the State of Indiana acquired 0.077 acres of Beargie's land for I-69. The subject property's 2014 and 2015 Property Record Cards show that the Assessor properly accounted for the taking by reducing its land size to 0.923 acres and calculating its value using the reduced acreage. The subject property's smaller size resulted in an \$800 reduction to its land value for the 2014 and 2015 assessments. And the increase in the subject property's improvement value in 2015 reflects the addition of a concrete patio that she missed in prior years along with the annual adjustment made for Washington Township. *Sharp testimony; Resp't Exs. A, B, C.*

10. In *Stevenson v. State of Indiana*, 193 N.E.2d 369 (Ind. 1963), the Indiana Supreme Court ruled on how damages in condemnation cases are calculated. The appraisers value the whole property and then value the property remaining after the taking. The difference between those two values is the amount of damages to the residue. But, here, we do not know the number the appraisers started or ended with – we just know the damages were approximately \$79,000. Beargie seems to assume the appraisers started with the assessed value of the subject property, but that is merely speculation. Hypothetically, what if the appraisers started with a value of \$300,000 and found \$79,000 in damages, or what if they started with a value of \$80,000 and the damage award made the subject property's value near zero. *Meighen argument*.

BURDEN OF PROOF

11. Generally, a taxpayer seeking review of an assessment must prove that the assessment is wrong and what the correct value should be. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, (2) or the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. I.C. § 6-1.1-15-17.2(a), (b) and (d).
12. Beargie's assessment increased from 2014 to 2015, but the increase did not exceed 5%. Beargie therefore bears the burden of proof.

ANALYSIS AND CONCLUSIONS OF LAW

13. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the

value of the property to the user.” I.C. § 6-1.1-31-6(c) and (e). It is instead determined under the DLGF’s rules. I.C. § 6-1.1- 31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines “true tax value” as “market value in use,” which it in turn defines as “[t]he market value in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property.” MANUAL at 2.

14. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are “appropriate for determining true tax value.” MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property’s true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass’r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the method used, a party must explain how his evidence relates to the relevant valuation date. *Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for a 2015 assessment was March 1, 2015. I.C. § 6-1.1-4-4.5(f).
15. As discussed above, Beargie has the burden of proof. He offered the first page from the Report of Appraisers filed in the State of Indiana’s eminent domain action against him. The Indiana Supreme Court has instructed that the proper measure of damages in eminent domain cases is the difference between the value of the entire parcel before the taking and the value of the residue after the taking. *Stevenson*, 193 N.E.2d at 390 (citing West’s I. L. E., Eminent Domain, Vol. 11, § 53, p. 611).
16. Here, the appraisers calculated the damages to the subject property to be \$78,795. But the report provides no insight into the appraisers’ opinion of the subject property’s pre- and post-taking valuations. And Beargie was unsure how the three appraisers had valued his property. The report’s damage calculation therefore tells us nothing about the value

of the subject property after the taking and is merely a conclusory statement. Thus, it is not probative evidence of the subject property's true tax value. *See Inland Steel Co. v. State Bd. of Tax Comm'rs*, 739 N.E.2d 201, 211 (Ind. Tax Ct. 2000) (citation omitted), review denied (stating that conclusory statements are insufficient to make a prima facie case because they are not probative evidence (i.e., "evidence that 'tends to prove or disprove a point in issue'").

17. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to "demonstrate that their suggested value accurately reflects the property's true market value-in-use." *Eckerling*, 841 N.E.2d at 678. Beargie offered no such evidence. Nor did he attempt to demonstrate the true tax value of the subject property using any of the three generally accepted valuation methods. Consequently, the Board finds that Beargie failed to make a prima facie case that his 2015 assessment was incorrect.
18. Where a petitioner has not supported his claim with probative evidence, respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. Ltd. v. Dep't of Local Gov't Fin.*, 799 N.E. 2d 1215, 1221-22 (Ind. Tax Ct. 2003).

SUMMARY OF FINAL DETERMINATION

19. Beargie failed to make a prima facie case that his property's 2015 assessment exceeded its true tax value. Accordingly, the Board finds for the Assessor and orders no change.

This Final Determination of the above-captioned matter is issued by the Board on the date first written above.

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.